

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF OREGON  
PORTLAND DIVISION

STEVEN GEORGE PARDEE,

CV. 11-877-HZ

Petitioner,

ORDER TO DISMISS

v.

STEVEN FRANKE,

Respondent.

HERNANDEZ, District Judge.

On July 28, 2011, the Court issued an Order to Show Cause (#9) why Petitioner's motion to stay his federal petition, imbedded in the habeas petition (#3), should not be denied. The Court has received Petitioner's Response (#13). For the reasons that follow, the Motion to Stay is DENIED and the Petition for Writ of Habeas Corpus (#3) DISMISSED without prejudice.

After enactment of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA), the Supreme Court recognized stay and abeyance of mixed petitions is permissible in limited circumstances and at the discretion of the district court. *Rhines v. Weber*, 544

U.S. 269, 277-78 (2005). Petitioner states in his Response to the Court's Order to Show Cause that his post-conviction ("PCR") case is pending in state court and that he seeks to have his federal petition "lay inactive" until final resolution is reached in the state PCR proceedings to ensure he is timely in filing his federal petition. (#13, at 2.) The Court does not find the justification Petitioner presents in support of his motion comports with the rule announced in *Rhines*, that stay and abeyance be available only in limited circumstances. Accordingly, Petitioner's motion to stay the petition is DENIED, and the Petition for Writ of Habeas Corpus (#3) is DISMISSED without prejudice.

IT IS SO ORDERED.

DATED this 29th day of September, 2011.

/s/ Marco A. Hernandez  
Marco A. Hernandez  
United States District Judge